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No. ——

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ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

RICHARD BOULIN,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-5287(L)
No. 82-6443

UNITED STATES OF AMERICA,
Appellee,

v.

RICHARD BOULIN,
Appellant.

Appeal from the United States District Court
for the District of Maryland, at Baltimore
Herbert F. Murray, Judge

Argued: December 10, 1982 Decided: April 12, 1983

Before WINTER, Chief Judge, RUSSELL, Circuit Judge and BRYAN, Senior Circuit Judge.

David H. Martin (Richard E. Gardiner on brief) for Appellant; Lynne A. Battaglia, Assistant United States Attorney (J. Frederick A. Motz, United States Attorney on brief) for Appellee.

BRYAN, Senior Circuit Judge:

Richard Boulin attacks his conviction of violations of the Gun Control Act of 1968, (the Act), 18 U.S.C. §§ 921-928. A Federally licensed firearms dealer, he sold various weapons to an informant who reported to the Bureau of Alcohol, Tobacco, and Firearms (B.A.T.F.). Following searches of Boulin's business premises and home, a grand jury for the District Court of Maryland returned a thirteen-count indictment of him for unlawful sales and with failure to maintain records conforming to the Act.[1] Found guilty on ten counts, he appeals and we affirm.

I

A former police officer, Boulin received a Federal license on February 2, 1976 to trade in firearms. It confined sales to his business premises in Silver Spring, Maryland. While attending the J & S Wildcat Gun Show in Baltimore on September 25, 1977 he sold three guns to B.A.T.F. informant, Gordon Schoen. He recorded two of these sales in his personal weapons log, but failed to include the sale of a Luger pistol. He did not file transfer forms for any of these transactions.

Six days later, Boulin sold three more handguns to Schoen at a gun show in Greenbelt, Maryland. Entries in his weapons log were made for two of these weapons for which he also executed transfer papers. Nonetheless, he neither recorded nor reported the sale of a Colt .357 magnum revolver. Boulin returned to the same gun show on November 5, 1977. There he sold a Colt Python Revolver to Schoen, but again omitted to record or report it.

In a telephone conversation on December 6, 1977, Schoen and Boulin discussed the possibility of transacting further sales without submitting Federal forms.[2] Schoen then

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[1] The indictment charged Boulin with violations of 18 U.S.C. §§ 2, 922(c), 922(m), 923, 924(a); 27 C.F.R. §§ 178.124(a), 178.124(c), 178.126(a).

[2] A tape recording of the conversation revealed that Boulin agreed the sales would be "like we did them before."

passed this information on to B.A.T.F. Special Agent William McMonagle who drafted an affidavit which detailed the various purchases by Schoen. It also noted that at his home and place of business, Boulin had concealed weapons that had been used and were intended to be used in breach of the Federal firearms laws. A United States Magistrate issued two warrants authorizing the search of both places for "firearms, ammunition and records involved in, used in or intended to be used in violation of Title 18 U.S.C. 922(m) and 922(c)." During the home search, B.A.T.F. agents seized numerous weapons, Boulin's weapons log, and his dealer's records.[3]

Of the thirteen indictment counts Boulin was convicted of ten violations of the Gun Control Act and regulations promulgated pursuant to it.[4] The District Court had denied the defendant's pre-trial motion to suppress the evidence, and upon a stipulation of facts, his convictions fol-

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[3] The B.A.T.F. agents seized 34 long guns, 49 handguns, and 5,765 rounds of ammunition. Also seized were Boulin's personal weapons log, Federal firearms license dealers records, and personal credit card records.

[4] The indictments embodied the sales of seven weapons on three different dates. (1) On September 24, 1977, Boulin sold the following weapons: A Luger semi-automatic pistol, for which no records were completed; a Colt .25 caliber semi-automatic pistol, which was recorded in the defendant's personal weapons log, but for which no Federal transfer papers were completed; a Browning .22 semi-automatic rifle, which only was recorded in Boulin's personal weapons log. (2) On October 1, 1977 Boulin sold the following weapons: a Colt .357 Magnum revolver, for which no records were completed; a High Standard .22 caliber semi-automatic pistol, for which all records were completed; a Smith & Wesson .357 Magnum revolver for which all records were completed. (3) On November 5, 1977, Boulin sold a Colt Python .357 Magnum revolver without completing any records.

lowed.[5] A post trial petition for a writ of error *coram nobis* also was denied.[6]

II

The Act established a comprehensive scheme for regulating the purchase and sale of firearms. 18 U.S.C. §§ 921-928. It put severe limitations upon an individual's free engagement in the busines of gun trading.[7] Among the strictures are those requiring the reporting of sales where the purchaser does not appear in person at a licensed dealer's place of business.[8] Failure to make a nec-

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[5] The Government entered a *nolle prosequi* as to the remaining three counts of the indictment.

[6] The defendant's petition for the writ centered on a letter from B.A.T.F. Acting Director Krogman to a United States Senator. *See* discussion of letter *infra*.

[7] In passing the Act, Congress declared that its purpose was to control weapons traffic in interstate and foreign commerce. Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901, 82 Stat. 226 *reprinted following* 18 U.S.C. § 921.

[8] 18 U.S.C. § 922(c). The section reads:

> (c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—
>
> (1) the transferee submits to the transferor a sworn statement in the following form:
>
> * * * *
>
> (2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or had had the statement returned due to the refusal of the

essary record amounts to an infraction of the law. *Id.* § 922(m).

Additionally, 18 U.S.C. § 923(g) dictates that records must be maintained that cover the disposition of all firearms by a dealer. It grants the Secretary of the Treasury authority to prescribe regulations governing the form of these records. Regulations issued under this section mandate the completion of a firearms transaction record, Form 4473, whenever a licensed dealer disposes of a firearm. 27 C.F.R. § 178.124(a), (f). A separate form must be executed when a dealer disposes of more than one pistol at the same time. *Id.* § 178.126(a).

Boulin assigns numerous errors. Initially, he insists that the record-keeping requirements do not obtain where sales are made from a dealer's private gun collection instead of his business inventory.[9] We reject this distinction. When Boulin offered the weapons for sale the Federal regulations applied and it was immaterial whether the guns came from his personal or business listing. *United States v. Courier*, 621 F.2d 7, 9 (1st Cir. 1980);

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named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

[9] In advancing this argument, Boulin relies upon guidelines published by the Department of the Treasury in Industry Circular 72-30. This circular, however, explicitly refers to firearms in a dealer's private collection as those not being for sale. The Court of Appeals for the Seventh Circuit reached the same conclusion in *United States v. Scherer*, 523 F.2d 371, 373 (7th Cir. 1975).

United States v. Scherer, 523 F.2d 371 (7th Cir. 1975), *cert. denied*, 424 U.S. 911 (1976).

Boulin next contends that he was improperly accused under 18 U.S.C. 922(c). To repeat, this section allows a licensed gun dealer to sell a weapon to a person who does not appear at his business premises if various reports are made. According to the agreed facts the defendant sold weapons away from his business location without obeying the additional requirements of 922(c). He therefore properly was indicted under this section.

Throughout his prosecution, Boulin claimed that in doing business with Schoen he had relied upon the opinion of an unidentified B.A.T.F. agent as to the extent of the recording requirements. He further postulates that a letter from the Acting Director of the B.A.T.F. to a United States Senator enunciates the same advice the B.A.T.F. agents related to him, and because of this, his prosecution was fundamentally unfair. Nonetheless, the District Court found, and we agree, that Boulin did not in fact rely upon this purported counseling. During the relevant period, Boulin did record some sales of "personal" firearms although he failed to record the sales made to Schoen on September 25, 1977, October 1, 1977, and November 5, 1977. As the District Court correctly noted, the doctrine of estoppel cannot be applied unless reliance is shown. *Bornstein v. United States*, 345 F.2d 558, 563 (Ct. Cl. 1965).

Also, the defendant avers that the Government broke the law of *Brady v. Maryland*, 373 U.S. 83 (1963), by not disclosing the letter from the Acting Director to the Senator. Boulin stresses that had he been aware of the letter, he would not have waived his right to a jury trial because of the letter's potential use for impeachment purposes.[10] The communication, however, does not evince an

[10] Indeed, Boulin waived his right to a jury trial on September 13, 1978 while the letter was dated July 30, 1979.

invocation of the rule in *Brady*. First, it is only an interpretation of the law and not a fact material to issues of guilt or punishment. *Reddy v. Jones*, 572 F.2d 979, 982 (4th Cir. 1977); *see also Moore v. Illinois*, 408 U.S. 786, 794 (1971). Second, the reliability of the B.A.T.F. witnesses against whom the letter might have been used would not have been determinative of Boulin's guilt or innocence. *United States ex rel Marzeno v. Gengler*, 574 F.2d 730, 735 (3d Cir. 1978). Rather, the recorded conversations and stipulated facts were so determinative.

Boulin also attacks his conviction on the grounds that the warrant employed to search his home was unsupported by probable cause. An examination of the affidavit submitted by Agent McMonagle yields an opposite conclusion. The affidavit extensively detailed a series of weapons transactions between a named informant and the defendant in which the requisite forms were not completed. It also related a telephone conversation between the two men which raised the prospect of further sales without the furnishing of completed forms and that the subject matter of these sales was stored at Boulin's home. The District Court properly concluded that probable cause existed.

A further ground for reversal asserted by the defendant is that the search warrant lacked a particular description of the things to be seized. The purpose of the particularity demand of the Fourth Amendment is to assure that the police do not engage in a "general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). The requirement renders general searches impossible by leaving nothing to the "discretion of the officer executing the warrant." *Stanford v. Texas*, 379 U.S. 476, 485 (1965), *quoting Marron v. United States*, 275 U.S. 192, 196 (1927).

At the same time, this Court has recognized that where First Amendment considerations are not involved, "[t]he character of the items to be seized pursuant to a warrant

controls to a large extent the specificity required in describing them . . ." *United States v. Lowry*, 675 F.2d 593, 595 (4th Cir. 1982). Consequently, the requirement of particularity contains a "practical margin of flexibility." *Id.* at 595; *United States v. Jacob*, 657 F.2d 49, 52 (4th Cir. 1981), *cert. denied*. 102 S.Ct. 1435 (1982); *United States v. Espinoza*, 641 F.2d 153, 165 (4th Cir. 1981), *cert. denied* 454 U.S. 841 (1981); *United States v. Torch*, 609 F.2d 1088, 1090 (4th Cir. 1979), *cert. denied* 446 U.S. 957 (1980).

Here the items to be seized were limited to Boulin's cache of arms and the records pertaining to them. It was not imperative that each weapon or document be described individually. The description of the items set forth in the warrant fell within the "margin of flexibility" necessary for meeting the injunction of specificity under the Fourth Amendment.

For the reasons stated, we find no error in the judgment of the District Court and so we affirm.

AFFIRMED

WINTER, Chief Judge, dissenting:

If we are to decide this case now,[1] I would reverse all the judgments because of the invalidity of the warrant, which lacked particularity with respect to the items to be seized. In any event, irrespective of the admissibility of the evidence seized, I would reverse those convictions based upon violations of 18 U.S.C. § 922(c).

I therefore respectfully dissent.

I.

The search warrant in this case, the execution of which uncovered evidence used to convict defendant, properly described a particular place to be searched. It was quite nonspecific, however, in its authorization of the seizure of property allegedly concealed on the premises. Despite the Fourth Amendment's requirement that a warrant "particularly describ[e] . . . the . . . things to be seized", the warrant here merely referred to "firearms, ammunition and records involved in, used in, or intended to be used in violation of Title 18 U.S.C. Section 922(m) and 922(c) . . . ." The enforcing agents were thus effectively provided with a general warrant, authorizing wholesale seizure of items from defendant's combined home and business premises guided by only the agents' own on-the-spot legal interpretation of a federal criminal statute. There is evidence in the case that the agent supervising execution of the warrant was so uncertain of its scope that he telephoned his superior for clarification of what he could seize. And illustrative of the vice of the warrant even with such clarification was the seizure of commemorative guns mounted on plaques inside defendant's living quarters and wholly unrelated to the charges against him, and of his personal credit card account records over and above

[1] Decision here could well be stayed until the Supreme Court decides Illinois v. Gates, No. 81-430, reargued March 1, 1983, on the general issue of whether modification of the exclusionary rule might be warranted. Although the precise issue posed by *Gates* is not present here, it is not unlikely that what will be said when *Gates* is decided may have relevance to this case.

all his business records. The open-ended direction to seize items related to any "violation of Title 18 U.S.C. Section 922(m) and 922(c)" violated the Fourth Amendment guarantee that "nothing is left to the discretion of the officer executing the warrant." Marron v. United States, 275 U.S. 192, 196 (1927).

The warrant issued here is indistinguishable from that in United States v. Cardwell, 680 F.2d 75, 76-77 (9 Cir. 1982), which held that a direction to seize "corporate books and records, including . . . checks, check stubs, journals, [etc.,] of [certain named corporations,] which are the fruits and instrumentalities, of violations of 26 U.S.C. § 7201" was impermissibly general. On the authority of *Cardwell* and the cases it cites, I would make the same ruling here. Since, in my view, the seizure was in violation of the Fourth Amendment, I would suppress the evidence gathered thereby, and reverse defendant's convictions obtained on the basis of the tainted evidence.

II.

Defendant was convicted under five counts (counts 1-4 and 7) of the indictment charging a violation of 18 U.S.C. § 922(c).[2] That subsection prohibits a licensed dealer from selling a firearm to a purchaser who does not appear in person at the dealer's business premises unless certain conditions are satisfied. Significantly, the opening words of the subsection are "[i]n any case not otherwise prohibited by this chapter . . . ." Thus I view § 922(c) as making illegal only those acts or transactions which are not made illegal by other provisions of the firearms laws of Title 18 (§§ 921-928).

Each of the five § 922(c) counts relates to a given transaction which is also the subject of another count based on another firearms provision under which defendant was charged and convicted. Since § 922(c) by its terms could not render illegal that which was already illegal, these five convictions cannot stand.

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[2] The text is set forth in the majority opinion in n.8.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-5287

UNITED STATES OF AMERICA,
Appellee,

versus

RICHARD BOULIN,
Appellant.

No. 82-6443

UNITED STATES OF AMERICA,
Appellee,

versus

RICHARD BOULIN,
Appellant.

ORDER

The appellant's petition for rehearing and suggestion for rehearing in banc has been submitted to the court. Upon the request for a poll of the court on the suggestion for rehearing in banc, all of the Judges voted against rehearing in banc except Chief Judge Winter, Judge Murnaghan, Judge Sprouse and Judge Ervin, who voted in favor of rehearing in banc.

It is ADJUDGED and ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Chief Judge Winter for a panel consisting of Chief Judge Winter, Judge Russell and Judge Bryan. Chief Judge Winter dissents.

For the Court

/s/ William K. Slate, II
Clerk

[Filed Jul. 15, 1983]

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

MEMORANDUM

This matter arises on the petition of Richard Boulin for a writ of error coram nobis nullifying his 1979 conviction for failure to comply with the registration provisions of the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.*

Petitioner, formerly a federally licensed firearms dealer and so licensed on all dates pertinent to this case, was found guilty by the court on the basis of facts stipulated to by him and by the government. The stipulated facts before the court demonstrated that petitioner sold firearms to an undercover informant of the Bureau of Alcohol, Tobacco and Firearms (BATF) on three separate occasions while petitioner was away from his business premises. The stipulated facts showed further that petitioner knowingly failed to comply with the record-keeping provisions of 18 U.S.C. § 922, paragraphs (c) and (m).[1] Petitioner's chief defense was that the above-

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[1] 18 U.S.C. § 922(c) provides that "[a] licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manu-

cited sections of the United States Code were not intended to apply to firearms dealers when they were selling personal weapons. The court rejected this defense, adopting the reasoning of the Seventh Circuit Court of Appeals in *United States v. Scherer*, 523 F.2d 371 (7th Cir. 1975), *cert. den.* 424 U.S. 911 (1976):

> . . . [I]t is immaterial whether the weapons sold were originally acquired for [defendant's] personal use or for business purposes. They became a part of his business inventory the moment they were placed on the market for resale. 523 F.2d at 374.

A writ of error coram nobis is only available under 28 U.S.C. § 1651(a) when errors of fact on the part of the trial court are of such a fundamental character that the proceeding itself is rendered irregular and invalid. *United States v. Morgan*, 346 U.S. 502 (1953). It is an extraordinary remedy which is applied only where the circumstances of the case are such that justice will not be achieved without its use. *Id.* at 511. Absent compelling circumstances, a writ of error coram nobis will not issue. *Deckard v. United States*, 381 F.2d 77 (8th Cir. 1967).

In support of his petition, petitioner renews his argument that his conviction should be voided because in deciding to sell guns to the undercover informant, he relied on the advice given him by BATF inspectors that if he sold personally owned firearms to Maryland residents he

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facturer, or dealer)" only if the dealer obtains a sworn statement of intent from the transferee or delays delivery of the firearms for at least seven days.

18 U.S.C. § 922(m) provides:

(m) It shall be unlawful for any . . . licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make any appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

need not comply with the recording requirements of the Gun Control Act and regulations promulgated thereto. The government's response to Mr. Boulin's petition demonstrates to the court's satisfaction that petitioner did not rely upon BATF advice since petitioner did record some sales of "personal" firearms between July and October 1977 while failing to record the three sales to the undercover informant made on September 25, 1977, October 1, 1977 and November 5, 1977 (Government's response to petition for writ of error coram nobis, March 31, 1980, pp. 5-10). Therefore, there is no factual basis for petitioner's estoppel argument, since without reliance there is no basis for application of the doctrine of estoppel. *Bornstein v. United States*, 345 F.2d 558, 563 (Ct. of Cl. 1965). Nor has petitioner cited any criminal cases in which the doctrine of estoppel has been applied to prevent the government from exercising its law enforcement function. Therefore, there also is no legal basis for petitioner's estoppel argument.

Next, petitioner brings to the court's attention a letter dated July 30, 1979 from John G. Krogman, Acting Director of the Bureau of Alcohol, Tobacco and Firearms, to Senator S. I. Hayakawa, in which Mr. Krogman states that a licensee's disposition of personal firearms need not be recorded in the licensee's business records[2] (Exhibit B, petition for writ of error coram nobis).

Petitioner argues that the Krogman letter presents compelling circumstances for the court to disregard case law and vacate petitioner's conviction.[3] The court be-

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[2] The present Director of BATF states that Mr. Krogman's conclusion about the disposition of "personal" firearms is incorrect (Apr. 7, 1980 letter of BATF director G. R. Dickerson to Assistant U.S. Attorney Lynne Battaglia, attached to April 11, 1980 letter from Ms. Battaglia to the court).

[3] Petitioner relies upon *Deckard v. United States*, 381 F.2d 77 (8th Cir. 1957) in which a writ of error coram nobis was granted to vacate a conviction after various courts of appeal had invalidated

lieves that it would have found petitioner guilty even if the court had been aware of the Krogman letter. In finding petitioner guilty under 18 U.S.C. § 922(m), the court adopted the reasoning in *United States v. Scherer, supra*, and found that a federally licensed firearms dealer must comply with the record-keeping requirements when selling firearms from his personal collection. Petitioner also was found guilty of a violation of 18 U.S.C. § 922(c) which provides that a "licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer or dealer)" only if the dealer obtains a sworn statement of intent from the transferee or delays delivery of the firearms for at least seven days. Certainly, the Krogman letter does not address the requirements of a statement of intent or delay when weapons are sold away from business premises and therefore the court's finding of petitioner's guilt under 18 U.S.C. § 922(c) would remain unchanged.

Petitioner also argues that the Krogman letter constitutes *Brady* material which should have been disclosed to him. Petitioner misconstrues the *Brady* rule. The *Brady* rule does not apply unless the evidence suppressed is evidence favorable to the defense and is material to the issues of guilt or punishment. *Moore v. Illinois*, 408 U.S. 786 (1972). Petitioner asserts that the letter falls within the *Brady* mandate because of its impeachment potential. The court disagrees. The reliability of the BATF witnesses against whom the letter might possibly have been used would not have been determinative of petitioner's guilt or innocence. "Evidence impeaching the testimony of a government witness falls within the *Brady* rule when the reliability of the witness may be determinative of a

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the federal statute under which the individual had been convicted. The factual distinction between *Deckard* and the instant case is obvious since a letter written by the Acting Director of an Agency is a far cry from a court ruling that a statute is unconstitutional.

criminal defendant's guilt or innocence." *United States ex rel Marzeno v. Gengler*, 574 F.2d 730, 735 (3rd Cir. 1978).

In short, the court finds petitioner has failed to demonstrate any fundamental errors which would warrant the granting of the extraordinary writ of error coram nobis. Therefore, the petition will be denied.

/s/ Herbert F. Murray
United States District Judge

Dated: July 7, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

ORDER

For the reasons stated in the accompanying memorandum, it is this 7th day of July 1982, by the United States District Court for the District of Maryland,

ORDERED:

(1) that the petition of Richard Boulin for a writ of error coram nobis be, and the same hereby is, *Denied*; and

(2) that the Clerk of the Court mail a copy of this memorandum and order to each of the parties.

/s/ Herbert F. Murray
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Docket No. HM-77-0598

UNITED STATES OF AMERICA

vs.

RICHARD BOULIN
Defendant No. 1

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date October 4, 1979.

COUNSEL

WITH COUNSEL David H. Martin, Esq. (Ret.)

FINDING & JUDGMENT

There being Court/verdict of GUILTY as to Counts Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11 & 12.

Defendant has been convicted as charged of the offense(s) of (Counts Nos. 1 thru 4 inclusive, and 7) U.S.C., Title 18, Sections 922(c), 924(a) and 2—Unlawful sale of firearm; Aiding and Abetting. (Counts Nos. 8 thru 12 inclusive) U.S.C., Title 18, Sections 922(m), 923, 924(a) and 2; 27 CFR: 178.124(a) & (c)—Failure of federally licensed firearms dealer to maintain records; Aiding and Abetting.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year as to each of Counts Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12 to run concurrently on condition that Defendant be confined in a jail-type or treatment institution for a period of Thirty (30) Days. The Court recommends that the committment period be in a Work Release Program of the Montgomery County Pre-Release Center.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ADJUDGED that the defendant pay a fine to the United States in the sum of Five Hundred ($500.00) Dollars. Balance of period of confinement is suspended and the Defendant is placed on probation for a period of Eleven (11) Months on the usual terms and conditions of probation and the further special condition: that Defendant pay the fine at such times and in such amounts as directed by the Probation Officer. Defendant to report to begin service of sentence at the Montgomery County Pre-Release Center, when directed.

NOLLE PROSEQUI ENTERED BY UNITED STATES ATTORNEY IN OPEN COURT AS TO EACH COUNTS NOS. 5, 6 AND 13, WHICH WAS ACCEPTED BY THE COURT.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general

conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Certified as a true copy on
This Date 10-11-79

By /s/ Ailene Kaplan
Deputy

/s/ Herbert F. Murray
HERBERT F. MURRAY

Date October 4, 1979

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

ORDER

It is hereby ORDERED AND ADJUDGED that the first paragraph of the memorandum issued in this case on August 1, 1979, be amended to read as follows:

> "This criminal firearms sale case comes before the court on facts stipulated to by the government and the defendant, Richard Boulin. The defendant is a former Montgomery County, Maryland police officer who is charged with selling firearms to an undercover informant of the Bureau of Alcohol, Tobacco and Firearms without complying with the registration provisions of the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* Under the facts stipulated the court has no choice but to find Mr. Boulin guilty of the crimes charged in the indictment, except for Counts 5, 6 and 13 as to which the government will recommend dismissal. The court does this with great reluctance because the potential civil penalties in this case far outweigh the criminality of defendant's conduct."

/s/ Herbert L. Murray
United States District Judge

Dated: October 10, 1979

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

MEMORANDUM

This criminal firearms sale case comes before the court on facts stipulated to by the government and the defendant, Richard Boulin. The defendant is a former Montgomery County, Maryland police officer who is charged with selling firearms to undercover agents of the Bureau of Alcohol, Tobacco and Firearms without complying with the registration provisions of the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* Under the facts stipulated the court has no choice but to find Mr. Boulin guilty of the crimes charged in the indictment. The court does this with great reluctance because the potential civil penalties in this case far outweigh the criminality of defendant's conduct.

FINDINGS OF FACT

The defendant is a federally licensed firearms dealer and was so licensed on all dates pertinent to this case. (Stip. 2) He maintained his licensed firearms business premises at 9112 Pennsylvania Avenue, Silver Spring, Maryland 20910. (Stip. 3) On September 25, 1977, October 1, 1977 and November 5, 1977, defendant sold firearms to Gordon William Schoen while away from those business premises. (Stips. 6-10) On those occasions Mr. Schoen did not hold a federal firearms license of any kind. (Stip. 5) In connection with the sales to Mr. Schoen, the defendant knowingly:

(a) did not obtain or receive a sworn statement from Gordon William Schoen, the purchaser of the firearms, in the form prescribed by Section 922(c) of Title 18 of the United States Code;

(b) did not, prior to delivery of the firearms, forward by registered or certified mail a copy of the sworn statement, together with a description of the firearm being sold, to the chief law enforcement officer of Mr. Schoen's place of residence;

(c) did not delay shipment or delivery of the firearms to Mr. Schoen for a period of at least seven days following receipt of notification of the acceptance or refusal of delivery of the statement; and

(d) did not retain, as part of his federal firearms records, a copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification.

(Stip. 12)

In connection with the same sales, the defendant knowingly failed to record the sales on firearms transaction records, or to obtain the same from Mr. Schoen, in accordance with the procedures set forth in 27 C.F.R. 178.124(a) and 178.124(f). (Stip. 13) Defendant's Federal Firearms Records do not include records of the sales to Mr. Schoen. (Stip. 14).

Mr. Boulin is charged with violating 18 U.S.C. § 922, paragraphs (c) and (m). 18 U.S.C. § 922(c) provides that "[a] licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer)" only if the dealer obtains a sworn statement of intent from the transferee or delays delivery of the firearms for at least seven days.

18 U.S.C. § 922(m) provides:

> (m) It shall be unlawful for any . . . licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

This section imposes criminal liability for failure to record the sales in accordance with 27 C.F.R. 178.124(a) and C.F.R. 178.124(f).

The activities of the defendant described in the stipulated facts conform in all essential details to activities expressly prohibited by these two sections of the United States Code. In *United States v. Huffman*, 518 F.2d 80, 81 (4th Cir. 1975), the Fourth Circuit Court of Appeals held that criminal intent is *not* an element of the crimes charged under the Gun Control Act. Under the stipulated facts, therefore, the government has made out a *prima facie* case against the defendant.

STATUTORY INTENT

The defendant contends that these sections of the United States Code were not intended to apply to firearms dealers when they were selling personal weapons not held as part of their business inventory. This is precisely the argument the court rejected earlier in this case when the court denied defendant's Motion to Suppress and Return Evidence and Personal Property. At that time this court adopted the reasoning of the Seventh Circuit Court of Appeals in *United States v. Scherer*, 523 F.2d 371 (7th Cir. 1975), *cert. den.*, 424 U.S. 911 (1976). As that court stated,

> . . . [I]t is immaterial whether the weapons sold were originally acquired for [defendant's] personal use or for business purposes. They became a part of his business inventory the moment they were placed on the market for resale. 523 F.2d at 374

The statutes are strict liability statutes which make failures to report criminal offenses regardless of intent. While this result may seem harsh, it is the result of congressional efforts to "put teeth" into enforcement of gun control laws.

CIVIL IMPLICATIONS

Early in this opinion the court stated that it found Mr. Boulin guilty with great reluctance because of the civil forfeiture penalties that might accompany this conviction. If there were any way that this court could enjoin imposition of those penalties it would do so for the court believes that the necessary deterrence can be achieved through the criminal penalties available. Furthermore, the court has found Mr. Boulin to be an uncommonly cooperative defendant whose involvement in this case has been an isolated act of wrongdoing in an otherwise lawful and productive career.

Although the forfeiture issue has not been formally raised the court wishes to emphasizes its belief that justice would not be served by confiscation of Mr. Boulin's firearms without compensation. The court is informed that much of Mr. Boulin's personal savings are invested in this collection. The court suggests that perhaps the Departments of Justice and the Treasury and Mr. Boulin could arrange to sell the weapons in a closely regulated manner and that the proceeds from the sale be returned to Mr. Boulin. As previously noted, there are ample deterrents to future criminal conduct without depriving Mr. Boulin of his life's savings.

The court will sign an appropriate judgment order submitted by the government.

/s/ Herbert L. Murray
United States District Judge

Dated: August 1, 1979

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

MEMORANDUM AND ORDER

On December 20, 1977 the Grand Jury for the District of Maryland returned a thirteen count indictment charging defendant Richard Boulin, a licensed firearms dealer, with illegal sales of weapons to non-licensed persons, and a failure to maintain proper documentation as to such sales, in violation of the Gun Control Act, 18 U.S.C. 921, *et seq.* Five of the weapons described in counts of the indictment were from what defendant describes as his own personal gun collection. The sales, the government alleges, were made to a cooperating non-licensed individual named Gordon William Schoen at various gun shows at Baltimore and Greenbelt, Maryland where Boulin held himself out as a federally licensed dealer dealing as Commemoratives Unlimited, 9112 Pennsylvania Avenue, Silver Spring, Maryland.

On December 14, 1977, Special Agents of the Bureau of Alcohol, Tobacco and Firearms executed search warrants at the 9112 Pennsylvania Avenue address (defendant's licensed firearms' premises) and 8700 Hawkins Creamery Road, Gaithersburg, Maryland, the defendant's residence. Nothing was seized from the business prem-

ises. However, at defendant's residence the agents seized 83 firearms, 5,765 rounds of ammunitions, and various firearms records, including defendant's Dealer's Firearms Record Book, Dealer's Ammunition Record Book, and Personal Weapons Transactions Log.

On January 13, 1978, defendant moved under Rule 41(e) of the Federal Rules of Criminal Procedure for the return of all property seized at his residence and for suppression under Rule 12 of the use of such property as evidence in the trial of the charges in the indictment.

On February 13, 1978 at the joint request of the parties, the trial date was continued, and the court proceeded to hold an evidentiary hearing on April 7, 1978 on the Motion for Return of Property and to Suppress. The hearing was not concluded on that date but was continued on June 9, 1978 and again on June 19, 1978. The parties have submitted memoranda and the matter is ripe for determination.

The Basis for the Rule 41(e) Motion

Rule 41(e) of the Federal Rules of Criminal Procedure provides:

> A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial.

The application for the search warrant which issued for the search of defendant's residence premises set forth that there was concealed therein certain property, namely, "firearms, ammunition and records which are the fruits, instrumentalities and evidence of violation of Title 18 U.S.C. Section 922(m) and 922(c)." The cited statu-

tory provisions impose on a federally licensed firearms dealer certain record-keeping requirements when selling firearms. Defendant maintains that he was in lawful possession of the firearms which were seized, since there is no evidence that he obtained the items in his "personal collection" illegally. He further contends that the seizure was illegal because there is no requirement under the law that a federally licensed firearms dealer comply with the record-keeping requirements of federal law when selling firearms from his *personal* collection. Additionally, it is argued by defendant that even if defendant was required to keep the records described in the statute at the time he sold guns from his private collection, the government cannot seize *other* unsold firearms from that collection, absent a showing of an intention on defendant's part to sell such weapons without complying with the record-keeping requirements. Finally, defendant contends the search warrant is technically deficient for failure to describe with sufficient particularity the items to be seized.

A. *The Application of the Gun Control Act to Sales by Firearms Dealers of Guns from a Personal Collection*

Because the record-keeping provisions of sections 922 (c), 922(m) and 923(g) do not specify whether they pertain to sales of firearms in a personal collection by a licensed dealer, defendant contends that it is appropriate to examine the legislative history of the Gun Control Act and that an examination will indicate that Congress did not intend the Act to pertain to such transactions. Defendant relies primarily on the preamble of the Gun Control Act which states that the Act is not intended to "discourage or eliminate the private ownership or use of firearms." Defendant argues that application of the record-keeping restrictions of the Act to sales of personal collections would constitute an unnecessary burden in contradiction to the purpose of the Act contained in the preamble.

The preamble does not address itself to the need to avoid restrictions on the sale or disposition of firearms, but only to avoidance of restrictions on ownership and possession of firearms. Accordingly, the preamble does not aid the court in determining the scope of the record-keeping provisions which apply to sales of firearms.

Defendant also argues that the application of the record-keeping provisions to sales by licensed dealers of personal firearms would violate the congressional intent not to adversely affect a person's desire to enter the business of dealing in firearms. Defendant reasons that application of these restrictions to a dealer selling personally held weapons would make it undesirable to become a dealer because persons selling guns without a license would not have to maintain such records. Defendant does not offer any support for his assumption that an unlicensed person could engage in sales of personally held firearms without complying with the restrictions of the Gun Control Act (Defendant's Memorandum at 6, n.3.), and the court does not agree with defendant's assumption. It is unlawful for a person to engage in the business of dealing in firearms without a license. 18 U.S.C. § 922 (a)(1). Although the statute does not define the term "engaged in the business", courts have construed the term to apply to one whose time, attention, and labor is occupied by such activity for the purpose of profit. *See, e.g., United States v. Huffman*, 518 F.2d 80 (4th Cir. 1975); *United States v. Day*, 476 F.2d 562 (6th Cir. 1973), *cited with approval* in *United States v. Lovingood*, 73-2071 (4th Cir. March 14, 1974) (per curiam).

To be engaged in the business of selling firearms, a person need not have that activity as his primary one. *See United States v. 57 Miscellaneous Firearms*, 422 F. Supp. 1066 (W.D. Mo. 1976). In fact, very little activity is required for a person to be considered a dealer, and thus subject to the license requirement of the Gun Control Act. In *Lovingood*, the Fourth Circuit of Appeals held

that two sales over a period of one month involving a total of five guns is sufficient activity to characterize the seller as a dealer.

Accordingly, persons who sell guns with sufficient frequency to be characterized as dealers do not have the option which defendant assumes exists to operate with or without a license. The statute requires that they be licensed and adhere to the restrictions established for the operation of a dealership. Therefore, the application of the record-keeping provisions to sales of weapons from a personal collection does not in any way discourage persons from becoming licensed dealers.

Defendant also argues that the record-keeping provisions of the Gun Control Act are ambiguous, and therefore, they must be construed leniently in defendant's favor. Although a concern for individuals rights results in a rule of narrow construction of ambiguous statutes, the Supreme Court in *Huddleston v. United States*, 415 U.S. 814 (1974), in construing another section of the Gun Control Act, explained that penal laws should not be construed to defeat the obvious intention of the legislature. 415 U.S. at 831.

A review of the statute establishes that the legislature intended the record-keeping provisions to apply to sales of weapons from a dealer's personal collection. First, the regulations promulgated pursuant to sections 922 and 923(g) refer to the sale of "any firearm". Also, to achieve the purpose of the Gun Control Act, the record-keeping provisions must be applied to sales from personal collections. In *Barrett v. United States*, 423 U.S. 212 (1976), the Court explained that the act was designed to prevent firearms from coming into the hands of the unqualified. If licensed dealers could avoid maintaining records by simply designating guns as belonging to a personal collection rather than a business inventory or by selling the guns from their residences rather than their

place of business, the effectiveness of recording gun sales to monitor who receives the firearms would be destroyed.

In *United States v. Scherer*, 523 F.2d 371 (7th Cir. 1975), *cert. denied*, 424 U.S. 911 (1976), the Seventh Circuit addressed the same question before the court today: whether sales by licensed dealers of guns from a personal collection are regulated by the Gun Control Act. In applying the Act to such sales, the court explained that distinctions between business and personal transactions are unworkable and arbitrary. Once a gun is offered for sale by a dealer, it becomes part of his business inventory. In finding against the defendant, the court said:

> The necessary implication of these guidelines indicates that the act of selling a firearm, not its location or the arbitrary distinction between 'personal' and 'business' transactions, brings a weapon and the parties involved within the purview of federal control. In this regard the terms of 18 U.S.C. Section 923(g)[5] and the executing provisions of 26 C.F.R. Sections 178.124, 178.125 are clear. The statutes and regulations are comprehensive in their coverage, and refer to 'any firearm' and 'each disposition'. They were designed to keep a constant record of the transfer and location of firearms in order to reduce the indiscriminate flow of such weapons and the crime that inevitably follows in their wake. (footnote omitted). A licensed dealer must, therefore, comply with the record provisions of 26 C.F.R. Sections 178.124 and 178.125 each time he disposes of a firearm. In the instant case it is immaterial whether the weapons sold were originally acquired for Scherer's personal use or for business purposes. *They become a part of his business inventory the moment they were placed on the market for resale.* (Emphasis added) 523 F.2d at 374.

This court adopts the reasoning of the Seventh Circuit in *Scherer* and finds that a federally licensed firearms

dealer must comply with the record-keeping requirements of 18 U.S.C. Section 922(c) and (m) when selling firearms from his personal collection.

B. *Intent to Sell the Seized Firearms*

Defendant also argues that even if the court interprets the statute to require records to be kept on sales of guns from a dealer's personal collection, the government failed to show that defendant intended to sell the seized guns. Defendant argues that the mere fact that he sold five guns from his personal collection is insufficient to establish that he intended to sell any other guns illegally, particularly in light of the fact that the guns are not fungible. *See United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105 (5th Cir. 1958).

The question of intent is a factual one, and a dealer's entire stock is subject to forfeiture if the facts so warrant. *See United States v. 1,922 Assorted Firearms*, 330 F.Supp. 635 (E.D. Mo. 1971). For example, in *United States v. One Assortment of 12 Rifles & 21 Handguns*, 313 F.Supp. 641 (N.D. Fla. 1970), the court held that all guns displayed for sale were properly seized where defendant was operating as a dealer without a license.

In the present case, probable cause does not hinge merely on the fact that defendant previously had sold guns from his personal collection. The affidavit presented to the magistrate stated that defendant told Mr. Schoen, who was cooperating with the government agents, that he was willing to sell "numerous" guns which were at his residence without recording the sale. In this conversation, which took place on December 6, 1977, Schoen told Boulin that on December 14, 1977, he (Schoen) would be in the market to buy more firearms "off paper." According to Schoen, Boulin in agreeing to sell numerous firearms indicated he would sell them the same way he did before (referring to selling them without paperwork). Boulin said that the guns were being stored at his resi-

dence and would be there on December 14, 1977 when Schoen came there to buy them.

At the various hearings held on defendant's motion, the court heard tapes of monitored conversations between the defendant Boulin and Schoen which dealt with transactions for the sale of certain of the weapons from defendant's personal collection. A review of the facts and circumstances of these actual transactions circumstantially supports the inference that defendant intended to offer the weapons at his house for sale whenever the price was right. Also, the facts alleged in the affidavit of Agent William J. McMonagle in support of the application for a search warrant establish probable cause that the firearms seized at the Boulin residence were "involved or intended to be used" in violation of the Gun Control Act. *United States v. One Assortment of 12 Rifles & 21 Handguns*, 313 F.Supp. 641, 642 (N.D. Fla. Gainesville Div., 1970); *United States v. Ventresca*, 380 U.S. 102 (1965).

With regard to the claim that the items to be seized were not described in the warrant with sufficient particularity, the court finds pertinent here the language of the Seventh Circuit in *United States v. Scherer, supra*, dealing with a similar defense contention in that case:

> We have no such abuse of the warrant here. The items seized were limited to a cache of weapons and Scherer's Firearms Acquisition Record book—the document containing 'business records relating to the purchase and sale of firearms.' The defendant's argument that the agents could have inspected the volumes on the business premises as permitted by law, ignores the realities of the situation. Scherer had failed to record numerous weapons in his book. An affirmation of this belief depended upon a cross-check of the weapons with the volume entries. Since the firearms were not located in the defendant's office, seizure of

both the guns and records was the only feasible method of investigation.

The government was not required, as defendant contends, to unmistakably identify each weapon to be seized.

For the reasons herein stated, it is this 31st day of July, 1978,

ORDERED:

(1) that defendant's Motion to Suppress and Return Evidence and Personal Property be, and the same hereby is, *Denied*; and

(2) that the Clerk of the Court is directed to mail copies of this Memorandum and Order to George Beall, Esquire, counsel for defendant, and to Assistant United States Attorney Marsha A. Ostrer.

/s/ Herbert F. Murray
United States District Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM-77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

STIPULATION OF FACTS

It is hereby stipulated by and between the United States of America, by its undersigned counsel, and the Defendant, Richard Boulin and his undersigned counsel, that the following facts are true and correct, and that the facts contained herein shall be adopted by the parties and the finder of fact as if proved at trial:

1. At all times pertinent to this case, the Defendant resided at 8700 Hawkins Creamery Road, Gaithersburg, Maryland.

2. The Defendant has been a federally licensed firearms dealer since February 2, 1976, was a federally licensed firearms dealer on September 25, 1977, October 1, 1977 and November 5, 1977, and has held no other type of federal firearms license at any time. The Defendant's federal firearms license, a certified and exemplified copy of which is attached hereto as Exhibit 1 (and admitted in evidence herewith by agreement of the parties), authorized the Defendant to conduct business at 9112 Pennsylvania Avenue, Silver Spring, Maryland.

3. At all times pertinent to this case, the Defendant maintained his licensed firearms business premises at 9112 Pennsylvania Avenue, Silver Spring, Maryland 20910, as indicated on the business card of the Defendant which is attached hereto as Exhibit 2, and which is admitted in evidence herewith by agreement of the parties. A copy of such business card was presented to Gordon William Schoen on September 25, 1977. The Defendant's licensed firearms business was known as Commemoratives Unlimited and was individually owned at all times pertinent to this case.

4. At all times pertinent to this case, Gordon William Schoen resided at 2113 Sykesville Road, Westminster, Maryland.

5. At all times pertinent to this case, including on September 25, 1977, October 1, 1977 and November 5, 1977, Gordon William Schoen did not hold a federal firearms license of any kind.

6. On September 25, 1977, the Defendant set up a table at the J & S Wildcat Gun Show at the Baltimore Civic Center, Baltimore, Maryland, and displayed various firearms for sale. At such gun show, the Defendant sold and transferred to Gordon William Schoen three firearms, which were owned by the Defendant and were not recorded in his Dealer's Firearms Record Book, which was admitted into evidence at the suppression hearing in this case as Government's Exhibit 7. Mr. Schoen thereafter delivered the three firearms to Special Agent William J. McMonagle of the Bureau of Alcohol, Tobacco and Firearms. The three firearms which the Defendant sold to Mr. Schoen were as follows:

(a) One 9 mm Luger semi-automatic pistol, serial number on barrel 7318, on frame 4907, for $225.00 in cash, such pistol being admitted in evidence herewith as Exhibit 3, by agreement of the parties.

(b) One Colt .25 caliber semi-automatic pistol, serial number 15797, for $125.00 in cash, such pistol being admitted in evidence herewith as Exhibit 4, by agreement of the parties.

(c) One Browning .22 caliber semi-automatic rifle, serial number 34583T47, for $125.00 in cash, such rifle being admitted in evidence herewith as Exhibit 5, by agreement of the parties.

7. On October 1, 1977, the Defendant set up a table at the Greenbelt Gun Show at the Greenbelt National Guard Armory in Greenbelt, Maryland, and displayed various firearms for sale. At such gun show, the Defendant sold and transferred a Colt .357 magnum caliber revolver, serial number 36700SA to Gordon William Schoen, which was owned by the Defendant and was not recorded in his Dealer's Firearms Record Book, which was admitted into evidence at the suppression hearing in this case as Government's Exhibit 7, for $275.000 in cash, such revolver being admitted in evidence herewith as Exhibit 6, by agreement of the parties. Mr. Schoen thereafter delivered such firearm to Special Agent William J. McMonagle of the Bureau of Alcohol, Tobacco and Firearms.

8. On November 5, 1977, the Defendant set up a table at the Greenbelt Gun Show at the Greenbelt National Guard Armory, in Greenbelt, Maryland, and displayed various firearms for sale. At such gun show, the Defendant sold and transferred a Colt Python .357 magnum revolver, serial number 48051E, which was owned by the Defendant and was not recorded in his Dealer's Firearms Record Book, which was admitted into evidence at the suppression hearing in this case as Government's Exhibit 7, to Gordon William Schoen for $350.00 in cash, such revolver being admitted in evidence herewith as Exhibit 7, by agreement of the parties. Mr. Schoen thereafter delivered such firearm to Special Agent William J. McMonagle of the Bureau of Alcohol, Tobacco and Firearms.

9. Each of the firearms listed in paragraphs 6, 7 and 8 above is a "firearm" within the definition of Section 921(a) of Title 18 of the United States Code.

10. Neither the J & S Wildcat Gun Show on September 25, 1977, the Greenbelt Gun Show on October 1, 1977 nor the Greenbelt Gun Show on November 5, 1977 constituted a licensed business premise of the Defendant within the meaning of Section 922(c) of Title 18 of the United States Code.

11. At no time has Gordon William Schoen ever been requested to appear or appeared at the licensed business premise of the Defendant.

12. In connection with the sale of each of the five firearms specified in paragraphs 6, 7 and 8 above, the Defendant knowingly:

(a) did not obtain or receive a sworn statement from Gordon William Schoen, the purchaser of the firearms, in the form prescribed by Section 922(c) of Title 18 of the United States Code;

(b) did not, prior to delivery of the firearms, forward by registered or certified mail a copy of the sworn statement, together with a description of the firearm being sold, to the chief law enforcement officer of Mr. Schoen's place of residence;

(c) did not delay shipment or delivery of the firearms to Mr. Schoen for a period of at least seven days following receipt of notification of the acceptance or refusal of delivery of the statement; and

(d) did not retain, as part of his federal firearms records, a copy of the sworn statement and a copy of the notification to the local law

enforcement officer, together with evidence of receipt or rejection of that notification.

13. In connection with the sale of each of the five firearms specified in paragraphs 6, 7 and 8 above, the Defendant knowingly failed to record the sale of each such firearm to Mr. Schoen on a firearms transaction record, Form 4473 and to obtain a Form 4473 from Mr. Schoen with respect thereto, in accordance with the procedures set forth in 27 C.F.R. 178.124(a) and 178.124(f).

14. The Federal Firearms Records of the Defendant do not contain or reflect any Forms 4473 taken from Gordon William Schoen in connection with the sale to Mr. Schoen of each of the five firearms specified in paragraphs 6, 7 and 8 above.

15. All of the events described in the preceding paragraphs occurred in the State and District of Maryland.

16. In addition to the facts stipulated in the preceding paragraphs, the parties further stipulate that all contents of the court's file and all matters of record heretofore in this proceeding, including all testimony recorded in connection with the Defendant's Motion to Suppress and Return Evidence and Personal Property, all exhibits introduced into the record in connection with such testimony or otherwise (including transcripts of certain tape recordings made by the Government), and all stipulations of fact or other matters of record, shall be incorporated herein by reference and made a part hereof.

Date: 9-13-78 /s/ Russell T. Baker, Jr.
RUSSELL T. BAKER, JR.
United States Attorney

Date: 9-13-78 /s/ Lynne A. Battaglia
LYNNE A. BATTAGLIA
Assistant United States Attorney

Date: 9-13-78 /s/ John A. MacColl
JOHN A. MACCOLL
Assistant United States Attorney

Date: 9-13-78 /s/ David Martin
DAVID MARTIN
Counsel for the Defendant

Date: 9-13-78 /s/ William P. Crewe
WILLIAM P. CREWE
Counsel for the Defendant

Date: 9-13-78 /s/ Richard Boulin
RICHARD BOULIN
Defendant

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Criminal No. 77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

(Unlawful Sale of a Firearm, 18 USC §§ 922(c) and (a); Failure by Federally Licensed Firearms Dealer to Maintain Records, 18 USC §§§ 922(m), 923, 924(a), 27 CFR § 178.124 and (c), 18 USC § 2)

The Grand Jury for the District of Maryland charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one 9mm Luger semi automatic pistol, serial number on barrel 7318, on frame 4907, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT TWO

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one Colt .25 caliber semi automatic pistol, serial number 15797, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT THREE

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one Browning .22 caliber semi automatic rifle, serial number 34583T47, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT FOUR

And the Grand Jury for the District of Maryland further charges:

On or about the 1st day of October, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one Colt .357 magnum caliber revolver, serial number 36700SA, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT FIVE

And the Grand Jury for the District of Maryland further charges:

On or about the 1st day of October, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one Smith and Wesson .357 magnum caliber revolver, serial number N381089, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT SIX

And the Grand Jury for the District of Maryland further charges:

On or about the 1st day of October, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States

Code, Section 922(c) in connection with the sale of a firearm, that is, one High Standard model 101, .22 caliber semi automatic pistol, serial number 2079436, to a person (who was not a licensed importer, manufacturer, or dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT SEVEN

And the Grand Jury for the District of Maryland further charges:

On or about the 5th day of November, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a licensed dealer of firearms, knowingly failed to comply with the requirements of Title 18, United States Code, Section 922(c) in connection with the sale of a firearm, that is, one Colt Python .357 magnum revolver, serial number 48051E, to a person (who was not a licensed importer, manufacturer, or a dealer of firearms) who did not appear in person at his licensed business premises.

18 USC §§ 922(c) and 924(a), 18 USC § 2.

COUNT EIGHT

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 U.S.C. § 923 and 27

CFR § 178.124(a) in that he sold and disposed of one 9mm Luger semi-automatic pistol, serial number on barrel 7318, on frame 4907, to a nonlicensee without recording said transaction on a firearms transaction record, Form 4473.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.124(a) and (c), 18 USC § 2.

COUNT NINE

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 USC § 923 and 27 CFR § 178.124(a) in that he sold and disposed of one Colt .25 caliber semi-automatic pistol, serial number 15797, to a nonlicensee without recording said transaction on a firearms transaction record, Form 4473.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.124(a) and (c), 18 USC § 2.

COUNT TEN

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 USC § 923 and 27

CFR § 178.124(a) in that he sold and disposed of one Browning .22 caliber semi automatic rifle, serial number 34583T47, to a nonlicensee without recording said transaction on a firearms transaction record, Form 4473.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.124(a) and (c), 18 USC § 2.

COUNT ELEVEN

And the Grand Jury for the District of Maryland further charges:

On or about the 1st day of October, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 USC § 923 and 27 CFR § 178.124(a) in that he sold and disposed of one Colt .357 magnum caliber revolver, serial number 36700SA, to a nonlicensee without recording said transaction on a firearms transaction record, Form 4473.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.124(a) and (c), 18 USC § 2.

COUNT TWELVE

And the Grand Jury for the District of Maryland further charges:

On or about the 5th day of November, 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 USC § 923 and 27 CFR § 178.124(a) in that he sold and disposed of one

Colt Python .357 magnum revolver, serial number 48051E, to a nonlicensee without recording said transaction on a firearms transaction record, Form 4473.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.124(a) and (c), 18 USC § 2.

COUNT THIRTEEN

And the Grand Jury for the District of Maryland further charges:

On or about the 25th day of September 1977, in the State and District of Maryland,

RICHARD BOULIN

being a Federally Licensed Firearms Dealer did knowingly and unlawfully fail to maintain records which are required to be kept pursuant to 18 USC § 923 and 27 CFR § 178.126(a) in that he sold or disposed of one 9mm Luger semi-automatic pistol, serial number, on barrel, 7318, on frame 4907, and one Colt, .25 caliber semi-automatic pistol, serial number 15797, to Gordon William Schoen, a nonlicensee, without recording the said transaction on a Report of Multiple Sale or Other Disposition of Pistols and Revolvers, Form 3310.4 and did fail to forward to the office specified thereon later than the close of business on the day that the multiple sale or disposition occurred.

18 USC § 922(m), 18 USC § 923, 18 USC § 924(a), 27 CFR § 178.126(a), 18 USC § 2.

JERVIS S. FINNEY
United States Attorney

A True Bill:

Foreman

APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Docket No. 8-77

Case No. 5975N

UNITED STATES OF AMERICA

vs.

8700 HAWKINS CREAMERY ROAD,
GAITHERSBURG, MARYLAND

SEARCH WARRANT

To Special Agent William J. McMonagle, Bureau of Alcohol, Tobacco & Firearms, or any other authorized officer

Affidavit(s) having been made before me by Special Agent William J. McMonagle that he has reason to believe that on the premises known as 8700 Hawkins Creamery Road, Gaithersburg, Maryland, being described as a one story brick home with the numbers 8700 appearing over the door located at the intersection of Woodfield Road and Woodfield School Road in the Judicial District of Maryland there is now being concealed certain property, namely firearms, ammunition and records involved in, used in or intended to be used in violation of Title 13 USC Section 922(m) and 922(c) and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search on December 14, 1977 (not to exceed 10 days) the person or place named

for the property specified, serving this warrant and making the search in the daytime (6:00 a.m. to 10:00 p.m.*) and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before me as required by law.

Federal judge or magistrate

Dated this 12 day of December, 1977

/s/ [Illegible]
Judge (Federal or State Court of Record) or Federal Magistrate.

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* The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provisions in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)) A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

I received the attached search warrant December 12, 1977, and have executed it as follows:

On December 14, 1977 at 11:30 o'clock AM, I searched the person or premises described in the warrant and

I left a copy of the warrant with Mrs. Susan Boulin together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

SEE ATTACHED SHEETS

This inventory was made in the presence of Special Agent Eugene Reagan and Willie Ellison

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ Special Agent [Illegible]

Subscribed and sworn to and returned before me this ———— day of ——, 19—.

Federal Magistrate

AFFIDAVIT

I, William J. McMonagle, being duly sworn upon my oath, depose and state:

That I have been employed as a Special Agent with the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department, for approximately six and one-half (6½) years. During the course of that time I have had occasion to participate in, as well as, obtain and execute numerous arrest and search warrants regarding violations of the federal firearms and explosive laws.

Your affiant has known Gordon William Schoen for approximately four (4) months. During this time Mr. Schoen has provided your affiant with information in reference to unlawful and lawful firearms activities on a basis of at least five (5) times a week. A substantial portion of the aforementioned information provided to your affiant by Mr. Schoen has been independently corroborated by your affiant and other ATF Special Agents, and has been found to be true and correct in each instance.

On September 25, 1977, Gordon William Schoen, acting in cooperation with and under the guidance and control of your affiant, went to the J & G Wildcat Gun Show, Baltimore, Maryland. Mr. Schoen stated to your affiant that while there, he purchased the following firearms from Richard Boulin, a federally licensed firearms dealer, trading as Commemoratives Unlimited:

1. One 9mm Luger semi automatic pistol, serial number on barrel 7318, on frame 4907, for two hundred twenty-five dollars ($225.00)
2. One Colt .25 caliber semi automatic pistol, serial number 15797, for one hundred twenty-five dollars ($125.00)
3. One Browning .22 caliber semi automatic rifle, serial number 34583T47 for one hundred twenty-five dollars ($125.00)

With the knowledge and consent of Gordon William Schoen, the aforementioned transaction was monitored and recorded by your affiant by means of an electronic device placed on the person of Mr. Schoen. However, due to technical difficulties portions of the aforementioned transaction were inaudible.

Mr. Schoen further stated to your affiant that while at the aforementioned gun show, Boulin stated to him that he (Boulin) was a federally licensed firearms dealer and presented Mr. Schoen with one of his (Boulin's) business cards verifying the fact that he (Boulin) was in fact a federally licensed firearms dealer trading as Commemoratives Unlimited, 9112 Pennsylvania Avenue, Silver Spring, Maryland.

On October 1, 1977, Gordon William Schoen, acting in cooperation with and under the guidance and control of your affiant, went to the Greenbelt Gun Show, Greenbelt National Guard Armory, Greenbelt, Maryland. Mr. Schoen stated to your affiant that while there, he purchased the following firearms from Richard Boulin:

1. One Colt .357 magnum caliber revolver, serial number 36700SA for two hundred seventy-five dollars ($275.00)
2. One Smith and Wesson magnum caliber revolver, serial number NE81039, for two hundred seventy-five dollars ($275.00)
3. One High Standard model 101, .22 caliber semi automatic pistol, serial number 2079436, for one hundred dollars ($100.00)

With the knowledge and consent of Gordon William Schoen, your affiant monitored the aforementioned transaction by means of an electronic device placed on the person of Mr. Schoen. However, due to technical difficulties, portions of the aforementioned transaction were inaudible.

On November 5, 1977, Gordon William Schoen, acting in cooperation with and under this guidance and control

of your affiant, went to the Greenbelt Gun Show, Greenbelt National Guard Armory, Greenbelt, Maryland. Mr. Schoen stated to your affiant that while there, he purchased one Colt Python .357 magnum revolver, serial number 48051E for three hundred fifty dollars ($350.00) from Richard Boulin. With the knowledge and consent of Gordon William Schoen, the aforementioned transaction was monitored and recorded by your affiant by means of an electronic device placed on the person of Mr. Schoen. However, due to technical difficulties, portions of the aforementioned transactions were inaudible.

On or about November 14, 1977, your affiant received certification from the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, Mid-Atlantic Region, Philadelphia, Pennsylvania, stating that Richard Boulin who resides at 8700 Hawkins Creamery Road, Gaithersburg, Maryland, and whose federal firearms business is located at 9112 Pennsylvania Avenue, Silver Spring, Maryland, filed an application for a federal firearms license on November 20, 1975. He was issued a federal firearms license, number 52-7146, on February 2, 1976, and timely filed his renewal application. His current license will expire on March 1, 1978.

On or about December 6, 1977, Gordon William Schoen stated to your affiant that during some but not all of the aforementioned firearms transactions, he completed some federal firearms forms. However, Mr. Schoen was not sure of just how many forms he completed.

On December 7, 1977, Gordon William Schoen stated to your affiant that on December 6, 1977, he telephoned Richard Boulin at 253-6133 and told him that on Wednesday, December 14, 1977, he (Schoen) would be in the market to buy more firearms "off paper." According to Mr. Schoen, Mr. Boulin said that he would sell Mr. Schoen numerous firearms the same way he did before (referring to selling them without paperwork). Boulin said that the guns are presently being stored at his resi-

dence, 8700 Hawkins Creamery Road, Gaithersburg, Maryland, and that they would be there on Wednesday, December 14, 1977, when Schoen went there to buy them. Mr. Boulin then proceeded to give Mr. Schoen directions to his (Boulin's) residence at 8700 Hawkins Creamery Road, Gaithersburg, Maryland.

Based on the information set forth in this affidavit your affiant has reason to believe that presently being concealed on the federally licensed firearms premises of Richard Boulin, 9112 Pennsylvania Avenue, Silver Spring, Maryland, and at his residence, 8700 Hawkins Creamery Road, Gaithersburg, Maryland, are firearms, ammunition and records involved in, used in and intended to be used in violation of Title 18 USC Section 922(m), and 922(c).**

WILLIAM J. MCMONAGLE
Special Agent

Subscribed and sworn to before me this — day of December 197—

United States Magistrate

** Subsequent to each controlled purchase of firearms Gordon William Schoen stated to your affiant that during the purchase of said firearms, he did not execute any sworn statements so prescribed by the Title 18 USC Section 922(c).

All of the aforementioned firearms purchased by Mr. Schoen were turned over to your affiant by Mr. Schoen subsequent to each controlled buy.

APPENDIX K

[SEAL]

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
Washington, D.C. 20226

30 Jul. 1979

Honorable S. I. Hayakawa
United States Senate
Washington, D.C. 20510

Dear Senator Hayakawa:

This is in reference to your letter of May 10, 1979, wherein you requested our comments on the abuses referred to in the article attached to your letter entitled "BATF Entrapment Schemes" by David T. Hardy.

The first portion of Mr. Hardy's article discusses "straw man entrapment" or the straw purchase. We emphasize that it is not the practice of ATF to conduct an undercover investigation regarding unlawful sales by firearms licensees unless there is reason to believe that the licensee has previously made unlawful sales. If the firearms licensee is reluctant to deal with the undercover agent, ATF immediately terminates its investigation. Furthermore, it is the Bureau's practice to permit the firearms licensee himself to suggest the medium of a straw purchaser to consummate the sale.

Thus, it is strictly prohibited for ATF undercover agents to encourage, as opposed to merely provide the opportunity for, such unlawful sales of firearms. In all instances, ATF agents seek to comply with the rules laid down by the Supreme Court concerning entrapment. In *United States v. Russell*, 411 U.S. 433, 435-436 (1973), the United States Supreme Court ruled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense

does not defeat the prosecution. It is only when the Government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play. Of course, any defendant having been unlawfully entrapped into commission of a crime has a valid defense to the prosecution.

The use of straw purchasers in acquiring firearms from licensees presents a serious law enforcement problem. These transactions thwart the intent of the Gun Control Act to keep firearms out of the hands of prohibited persons, as well as to regulate interstate commerce in firearms. Typically, the actual or ultimate purchaser is a felon or out-of-State resident to whom a licensee is prohibited from selling or delivering firearms. By utilizing a straw purchaser, who is himself eligible to obtain firearms, the prohibited person is able to acquire the firearm "off record" and conceal the transaction. Firearms acquired in this manner are frequently used in crime. For example, the firearm used by David Berkowitz, also known as "Son of Sam," in the murder of several persons in New York was purchased from a licensed dealer in Texas by a Texas resident acting on Berkowitz's behalf.

While there is a continuing need to monitor straw purchase transactions, you may be interested in knowing that we have implemented internal controls to ensure that investigations of these cases are kept within proper limits and that only those cases warranting Federal prosecution are investigated. That is to say, any such investigation must be personally approved by the Director or the Deputy Director (the same is true with regard to investigations of firearms transactions at gun shows).

Furthermore, we are seeking to impact upon the problem of straw purchases by informing all licensees how to avoid those transactions which are contrary to law. A publication serving this purpose will be issued within the next few days.

In his article, Mr. Hardy alleges a second form of entrapment entitled "implied dealership" which he claims is used against collectors and those displaying firearms at gun shows. Under Federal firearms laws, a nonlicensed resident of the State in which the show is being held may buy, sell or exchange personal firearms with another nonlicensee of the same State. The resident may also sell to or place an order to buy firearms with a licensed firearms dealer, provided the resident does not "engage in the business" of dealing in firearms which requires a license under the Gun Control Act of 1968. Although the term "engaged in business" is not defined by statute, the courts have had no difficulty construing the term and have generally held it to mean an activity which occupies one's time, attention and labor for the purpose of livelihood or profit. While an actual profit from the sales of firearms need not be proved, a willingness to deal, a profit motive and a greater degree of activity than occasional sales by a hobbyist must be shown for purposes of a conviction. Thus, a nonlicensed resident may make an occasional sale as a hobbyist at a gun show or an individual may dispose of a gun collection at a gun show. However, if the nonlicensed person is acquiring firearms for the purpose of resale and the activities otherwise constitute engaging in a firearms business as discussed above, a violation of law would result. In investigations of such activities, ATF adheres to the rules concerning entrapment.

As a third form of entrapment, Mr. Hardy alleges that ATF agents approach a Federally licensed dealer and persuade the dealer to sell some privately owned firearms without making a record of the transaction. ATF's efforts are directed at those licensees who, as a part of their business, at or away from their licensed premises sell firearms to ineligible purchasers and fail to record the transaction as a means of concealment. We reiterate that ATF agents, in making such investigations are mindful of the law of entrapment.

ATF recognizes that a licensee may maintain a private collection of firearms independent of the business inventory and lawfully dispose of such firearms without entering the transaction in the licensee records. As stated in ATF Industry Circular 72-30, a licensee who uses the firearms license to obtain personal firearms must record in the business records the acquisition and disposition. Such firearms may be kept on the licensee's business premises for purposes of display or decoration and not for resale as long as they are segregated from the business inventory by appropriate identification. The licensee's subsequent sale of such personal firearms need not be recorded in the business records and a form 4473 executed by the purchaser would not be required.

With respect to Mr. Hardy's discussion of "Dewat Entrapment," the term "Dewat" technically denotes war trophy firearms that were deactivated under a program inaugurated in 1945 to permit returning servicemen to register their trophies under the National Firearms Act so that they could be retained. However, we construe Mr. Hardy's discussion as pertaining to any and all inoperable or unserviceable machineguns, including "Dewats."

The National Firearms Act (26 U.S.C., Chapter 53) requires, among other things, the registration of machineguns and the payment of taxes on transactions in such weapons. The term "machinegun" is defined by the Act to include any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes a machinegun frame or receiver alone. It should also be noted that an unserviceable machinegun (one that cannot be readily restored to an operable condition) is still a machinegun within the scope of the Act. Consequently, Mr. Hardy's inference that inoperable or unserviceable machineguns should not be held to be National Firearms Act weapons is wholly without merit.

The 1968 amendments to the National Firearms Act provided a 30-day amnesty period during which previously unregistered weapons could be registered by their possessors with impunity. Thereafter, only those weapons already registered and those registered pursuant to being lawfully made could be legally possessed or transferred. In short, a person in possession of an unregistered machinegun today cannot legitimize his possession of the weapon. The unregistered weapon is contraband and subject to seizure or abandoned to the Government. We would add that where the possessor's violation is nonwillful, criminal prosecution is not undertaken.

Mr. Hardy's discussion of practice grenades relates to the category of National Firearms Act weapons termed "destructive devices." In part, this term includes explosive bombs, grenades or similar devices. He cites the ATF case reported as *United States v. Kilivan*, 456 F.2d 555 (8th Cir. 1972), which, he infers, was erroneously decided. The court in *Kilivan* held that certain M-21 practice grenades were destructive devices for purposes of the National Firearms Act. Subsequent to the decision in *Kilivan*, other courts held that the M-21 practice grenade and other items designed by the military establishment for training or practice purposes did not constitute National Firearms Act weapons since devices which were neither designed nor redesigned for use as weapons were excluded from the term destructive device. Adhering to the weight of authority, ATF reversed its position and no longer considers such devices in their original configuration as National Firearms Act weapons.

In his heading entitled "Other Techniques," Mr. Hardy depicts a less than accurate situation regarding two-hand grip "silhouette" pistols. He states that ATF issued a "special" regulation under the National Firearms Act so as to bring such weapons within the scope of the Act for prosecution purposes. We disagree. This regulation defining "pistol" was added to the Code of Federal Regula-

tions on August 3, 1971, or approximately six years before silhouette pistols came into the limelight. Some of these weapons now technically fall within the Act's definition of firearm; however, we know of no prosecution under the Act regarding a silhouette pistol. During the last 2 years, a number of manufacturers of silhouette pistols have sought and obtained ATF's advice and counsel regarding the proper design to be employed in manufacturing these firearms so that they would not be included within the coverage of the Act.

We trust that this has been responsive to your inquiry. If we can be of further assistance in any way, please let us know.

Sincerely yours,

/s/ John G. Krogman
Acting Director

APPENDIX L

Letter of Director of BATF regarding disposition of "personal" firearms (April 7, 1980)

(Lodged with the Court)

DEPARTMENT OF THE TREASUR BUREAU OF ALCOHOL, TOBACCO AND FI. ARMS

FIREARMS TRANSACTION RECORD

PART I – INTRA-STATE OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION NO.

NOTE: Prepare in original only. All entries other than signatures must be typed or clearly printed in ink. All signatures on this form must be in ink.

SECTION A – MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) *(See Notice and Instructions on reverse.)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle) (Mr., Mrs., Miss)*	2. HEIGHT	3. WEIGHT	4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, State, Zip code)*	6. DATE OF BIRTH	7. PLACE OF BIRTH

8. CERTIFICATION OF TRANSFERREE *(Buyer)* – An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?		d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required if a conviction has been discharged, set aside, or dismissed pursuant to an expungement of rehabilitation statute.)		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
c. Are you a fugitive from justice?		h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE	DATE

SECTION B – TO BE COMPLETED BY TRANSFEROR (SELLER) *(See Notice and Instructions on reverse.)*

THE PERSON DESCRIBED IN SECTION A:
- ☐ IS KNOWN TO ME
- ☐ HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's License, etc. Positive identification is required. A Social Security card is not considered positive identification.)*	10. NUMBER ON IDENTIFICATION

On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.

11. TYPE *(Pistol, Rifle, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.

15. MANUFACTURER *(and Importer, if any)*

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller) (Hand stamp may be used.)*	17. FEDERAL FIREARMS LICENSE NO.

18. TRANSFEROR'S *(Seller's)* SIGNATURE	19. TRANSFEROR'S TITLE	20. TRANSACTION DATE

ATF F 4473 (5300.9) PART I (2-77) EDITION OF 3-76 MAY BE USED

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. Chapter 44 and Title VII of Public Law 90-351, 18 U.S.C. Appendix 1201-1203, as amended, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under Chapter 44 may determine if he may lawfully sell, deliver or transport a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales of transfers where neither person is licensed under 18 U.S.C. Chapter 44.

2. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. Chapter 44 prohibits the shipment, transportation or receipt in interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to marijuana or a depressant, stimulant or narcotic drug, or by one who has been adjudicated mentally defective or who has been committed to a mental institution. In addition, Title VII (18 U.S.C. Appendix 1201-1203) makes it unlawful for anyone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, who has been discharged from the Armed Forces under dishonorable conditions, who has been adjudicated mentally incompetent, who, having been a citizen of the United States, has renounced his citizenship, or who is an alien illegally in the United States, to possess a firearm.

INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. If, because of inability of the buyer to read or write, the answers are written by another person, this person and another person will sign as witnesses to the buyer's answers and/or signature.

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under the penalty of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, Items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.

4. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of the Gun Control Act of 1968 (18 U.S.C. Chapter 44) and Title VII, Unlawful Possession or Receipt of Firearms, (82 Stat. 197), and 27 CFR Part 178 (Commerce in Firearms and Ammunition).

5. Upon completion of the firearm transaction, the transferor (seller) must make a part of his permanent firearms records the Form 4473 (5300.9) Part I recording that transaction and any supporting documents. Form 4473 (5300.9) Part I and any supporting documents must be filed either chronologically by date of transaction, alphabetically by name of transferee (buyer), or numerically by transaction number if the transferor assigns transaction numbers to Form 4473 (5300.9) Part I.

6. In addition to completing this record, the licensee shall report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4, in accordance with 27 CFR 178.126a.

7. Additional forms are available from:

Bureau of Alcohol, Tobacco and Firearms
ATF Distribution Center
3800 S. Four Mile Run Drive
Arlington, Virginia 22206

DEFINITIONS

1. *Intra-State Over-the-Counter Transaction* – The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), who is a resident of the state in which the transferor's business is located, occurring on the transferor's business premises.

2. *Published Ordinances* – The publication (ATF P 5300.5) containing those State laws and local ordinances relevant to the enforcement of Chapter 44 of the Title 18, U.S.C., which is annually published in the Federal Register and distributed to each Federal firearms licensee by the Director, Bureau of Alcohol, Tobacco and Firearms.

U.S. Government Printing Office: 197 724-270

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

FIREARMS TRANSACTION RECORD

PART II – CONTIGUOUS-STATE OR NON-OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION NO.

NOTE: PREPARE IN DUPLICATE. ALL ENTRIES OTHER THAN SIGNATURES MUST BE TYPED OR CLEARLY PRINTED IN INK. ALL SIGNATURES ON THIS FORM MUST BE IN INK.

SECTION A - MUST BE COMPLETED PERSONALLY BY TRANSFEREE OR BUYER (See notices and instructions on reverse)

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle) (Mr., Mrs., Miss.)*	2. HEIGHT	3. WEIGHT	4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, State, Zip Code)*	6. DATE OF BIRTH	7. PLACE OF BIRTH

8. CERTIFICATION OF TRANSFEREE *(Buyer)* – An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?		d. Are you an unlawful user of, or addicted to marihuana or a depressant, stimulant or narcotic drug?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year. Also, a "yes" answer is required even if a conviction has been discharged, set aside, or dismissed pursuant to an expugment or rehabilitation statute.)		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
c. Are you a fugitive from justice?		h. Are you a person who having been a citizen of the United States, has renounced his citizenship?	

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am 21 years or more of age, or that, in the case of a shotgun or a rifle, I am 18 years or more of age; that I am not prohibited by the provisions of Chapter 44 of Title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are:

TITLE	NAME

ADDRESS

I also hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE	DATE

SECTION B - MUST BE COMPLETED BY TRANSFEROR OR SELLER (See notices and instructions on reverse)

On the basis of (1) the statements in Section A; (2) my notification of the chief law enforcement officer designated above; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm described below to the person identified in Section A.

9. TYPE *(Pistol, Rifle, etc.)*	10. MODEL	11. CALIBER OR GUAGE	12. SERIAL NO.

13. MANUFACTURER *(and importer, if any)*

14. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller) (Hand stamp may be used)*	15. FEDERAL FIREARMS LICENSE NO.

16. TRANSFEROR'S *(Seller's)* SIGNATURE	17. TRANSFEROR'S TITLE	18. TRANSACTION DATE

ATF F 4473 (5300.9) PART II (10-76) EDITION OF 2-75 MAY BE USED

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. Chapter 44 and Title VII of Public Law 90-351, 18 U.S.C. Appendix 1201-1203, as amended, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under Chapter 44 may determine if he may lawfully sell, deliver or transport a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. Chapter 44.

2. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. Chapter 44 prohibits the shipment, transportation or receipt in interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to marihuana or a depressant, stimulant or narcotic drug, or by one who has been adjudicated mentally defective or who has been committed to a mental institution. In addition, Title VII (18 U.S.C. Appendix 1201-1203) makes it unlawful for anyone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, who has been discharged from the Armed Forces under dishonorable conditions, who has been adjudicated mentally incompetent, who, having been a citizen of the United States, has renounced his citizenship, or who is an alien illegally in the United States, to possess a firearm.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This copy of ATF Form 4473, Part II, is to advise you of a firearms transaction involving a resident in your jurisdictional area. The firearm described in Section B will not be shipped or delivered to the transferee (buyer) identified in Section A for a period of at least seven days following receipt of the notification of your acceptance or refusal of delivery, by registered or certified mail of the form.

INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. If, because of inability of the buyer to read or write, the answers are written by another person, this person and another person will sign as witnesses to the buyer's answers and/or signature.

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under the penalty of perjury, stating

   (a) that the firearm is being acquired for the use of and will be the property of that business entity, and
   (b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, Items 9 through 13, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction.

4. The transferor (seller) of a firearm in a contiguous-State of non-over-the-counter transaction must forward by registered or certified mail (return receipt requested) the copy of the form to the chief law enforcement officer of the transferee's (buyer's) locality of residence. The transferor must delay shipment of delivery of the firearm for a period of at least 7 days following receipt of the post office notification of the acceptance or non-acceptance of the envelope. The transferor will retain as a part of the records required to be kept by 18 U.S.C. Chapter 44, the original form with evidence of the receipt or rejection of the notification forwarded to the chief law enforcement officer of the transferee's locality of residence.

5. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of the Gun Control Act of 1968 (18 U.S.C. Chapter 44) and Title VII, Unlawful Possession or Receipt of Firearms, (82 Stat. 197), and 27 CFR Part 178 (Commerce in Firearms and Ammunition).

6. Upon completion of the firearm transaction, the transferor (seller) must make a part of his permanent firearms records the original form recording that transaction and any supporting documents. The original form and any supporting documents must be filed either chronologically by date of transaction, alphabetically by name of transferee (buyer), or numerically by transaction number if the transferor assigns transaction numbers to Form 4473 (5300.9) Part II.

DEFINITIONS

1. *Contiguous-State Transaction*—The sale or other disposition of a rifle or shotgun to the resident of a contiguous State which has enacted legislation permitting residents of that State to purchase rifles or shotguns outside the State.

2. *Non-over-the-Counter Transaction*—A mail-order transaction to the resident of the State in which the transferor's (seller's) premises are located.

3. *Published Ordinances*—The publication (ATF P 5300.5) containing those State laws and local ordinances relevant to the enforcement of 18 U.S.C. Chapter 44, which is annually published in the Federal Register and distributed to each Federal firearms licensee by the Director, Bureau of Alcohol, Tobacco and Firearms.

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APPENDIX O

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM 77-0598

UNITED STATES OF AMERICA

v.

RICHARD BOULIN

Baltimore, Maryland

April 7, 1978

The above-entitled matter came on for hearing before His Honor, Herbert F. Murray at 10:00 a.m.

APPEARANCES

For the United States:

Marsha A. Ostrer, Esquire

For the Defendant:

George Beall, Esquire &
William P. Crewe, Esquire

• • • •

[22] Q. Now, getting back to the first visit you had with the Bureau of Alcohol and Tobacco Tax, could you describe to this Court what the nature of that visit was and what occurred?

A. All right. What it is, they periodically inspect for record keeping and inventory. They called me at work one day. I don't recall the investigator's name. He said,

"I need to come out and check your records for a routine audit." He said, "I'd like to come out today." I said, "No, sir, that's not possible because I do not keep the firearms here at my work. They're kept at home and the records are kept at home. Therefore, I would have nothing to show you."

So he said, "Well, when can I come inspect them?" So I said we can do it at this time, this time, this time. He said, well, we'll make it on this day, and then he decided to come to my house since everything was located there.

Q. Did he conduct an examination of your records at that time?

A. He came to my house. He conducted a thorough investigation of my books and my record keeping and my [23] inventory, to which he told me I passed with flying colors. There were no problems whatsoever. We had a long discussion about different firearms regulations and laws. I was trying to get an understanding because I was a new dealer.

He also came back and looked at my personal collection of firearms, admired them, and we discussed a few of the firearms. He told me I had a very nice collection.

Q. Were you subsequently audited by the A. T. F.?

A. I was audited the second time during the course of my license. It was approximately six or eight months afterwards. At that time the agent did the same thing, called me at my work. I explained to him again that I did not keep the records or the firearms there. He said, "Fine.". He said, "When can we do it?" I gave him some possibilities and we set up a date. He came in the morning one day at nine o'clock and we went through the inventory at work. I brought my inventory down in the car and my records were already on my desk. We went out to the car and got my inventory and brought it in so he could audit it.

Q. Did you have any discussion with him then?

A. Yes, sir. Obviously, since he was there from approximately nine o'clock until one or two o'clock, we had a good bit of conversation.

Q. Did you have any discussion with him of selling personal guns?

[24] A. Yes, sir, because there was some unclarity in the federal firearms regulations about personal firearms and I was trying to clarify it in my mind. Some opinions that he gave me were different than what were in the books and different than what the procedures were. Some of them were consistent.

Q. Was anything resolved between the two of you?

A. Basically the premise that I understood was anything that was acquired through my business, as a result of my business, or directly in exchange of another firearm in my business, I had to run through my books. Anything that was acquired away from my business, without the use of my federal firearms license, without the use of my business title, I was allowed to run through as any other person or citizen in the State of Maryland.

Q. Mr. Boulin, did you have any other discussion with the agents while your residence was under seizure?

A. Oh, yes, sir. We had numerous discussions. I was very upset. You have to understand that this was my life savings that they were about to take down. They came in with postal bags. They were going to take very, very expensive firearms and put them in postal bags which I had only handled with gloves myself, so you can imagine the shock that this was to me. I tried to explain to them over and over again what was for sale because it was differentiated by room. They could not do anything so they said, "Well, we'll call Baltimore." The agent in charge went on the phone and called Baltimore collect, and Baltimore told him—he came back and told me what they said, and that was to seize everything, every firearm and ammunition. And I showed him where each individual weapon was located. They found nothing that I did not tell them was there. I showed them where everything was and how they could safely be handled. I tried to cooperate with them to the utmost.

Q. Were all those guns yours, Mr. Boulin?

A. All those guns were mine with the exception of one and my wife's guns.

Q. What was the gun that did not belong to you?

A. I had a rifle that belonged to a police friend of mine, my ex-partner, George Theodore. He had given it to me to get a new clip put in it and to get some stock work done to it because I had an acquaintance up in Pennsylvania, a gunsmith that does excellent work and he asked me if I'd get it for him at a moderate price.

Q. Did you tell the officers that this did not belong to you?

A. Yes, sir, I certainly did, at the time they picked it up.

Q. Did you point out to them the guns that did not belong to you, that belonged to your wife?

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APPENDIX P

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Case No. HM 77-0598 Criminal

THE UNITED STATES OF AMERICA

v.

RICHARD BOULIN

Baltimore, Maryland

June 9, 1977

The above-entitled matter came on for hearing of motions before the Honorable Herbert F. Murray at 3:30 p.m.

APPEARANCES

For the United States of America:

Marsha A. Ostrer, Esquire

For the Defendant:

George Beall, Esquire
William P. Crewe, Esquire

* * * *

[52] By Ms. Ostrer:

Q. Now, directing your attention to the October 1st transcript, page 9 of that transcript, Mr. Boulin quotes a price to somebody at the gun show, is that correct?

A. Yes ma'am. The Greenbelt Armory.

Q. And the 6th notation down, the last sentence, Mr. Boulin is quoting a price to another individual on a weapon, a 550, serial number 579. Did you attempt to locate those in Mr. Boulin's records?

A. Yes, I did. I was unable to locate them in any of the records.

Q. Would you explain to his honor the difference between the slang term "on paper" and "off paper"?

A. Yes. On paper means the firearm must go through the proper procedures to be sold. Must be reflected in the bound book and on form 4473. Off paper means that the procedure is avoided and there is no paperwork to be completed thus not being able to trace the firearm back to the buyer.

Q. Is that in fact a violation of the law?

A. If it is done by a federal licensed firearms dealer, yes, it is a violation.

Ms. Ostrer: No further questions, your honor.

CROSS-EXAMINATION

By Mr. Crewe:

[53] Q. Mr. McMonagle, you did prepare the affidavit for the search warrant?

A. Yes, I did.

Q. Do you remember what is says?

A. It has been since December since I have seen it.

Q. I would like you to look at page 3 and see if that is a correct statement there?

A. Any particular part on page 3?

Q. The last paragraph on page 3.

A. Yes.

Q. You say that is your statement?

A. That is my statement.

Q. Sworn before the magistrate?

A. That is correct.

Q. Are you familiar with the telephone discussion of December 6, 1977 between Mr. Schoen and Mr. Boulin?

A. Yes, I am.

Q. Would you review that and find out whether Mr. Schoen said he was in the market to buy more firearms off paper, as quoted in your affidavit, "off paper,"?

(Pause.)

A. No, it is not on there.

Q. This affidavit was executed under oath, wasn't it?

A. That is correct.

Q. I also ask you to check and see—

[54] The Court: Could I see the affidavit?

Mr. Crewe: That is just a copy, your honor. I think it is in evidence.

Ms. Ostrer: I don't believe the affidavit has ben introduced in evidence. The original should be in the court file.

Your honor, I may be able to be of some assistance.

This is the one, your honor.

The Court: Where were you referring to?

Mr. Crewe: The one that I have, your honor, page three, the bottom paragraph.

The Court: What I was wondering about was: if what is contained on the last ten lines or so of page two and the first six lines of page three of the December 6 telephone conversation have any connection to what is in that paragraph of the affidavit?

The Witness: It does, your honor.

Your honor, I reflected what Mr. Schoen said to me. I did not reflect what I heard. Mr. Schoen reflected that statement to me. I asked if "off paper" was used and he said yes. Maybe he was actually making reference to the same way he did it before, which was off paper.

* * * *

APPENDIX Q

Telephone Conversation between Richard Boulin and Gordon Schoen—Date: 12/6/77; Time 7:32 p.m.

Boulin: Hello.
Schoen: Richard.
Boulin: Yeah.
Schoen: Gordon, how you doing?
Boulin: How you doing?
Schoen: What do you know?
Boulin: Not a whole lot.
Schoen: Trying to get to you.
Boulin: Is that right?
Schoen: Yeah, couple of times.
Boulin: Well, I'm not home much, you know. I work a lot.
Schoen: Yeah.
Boulin: Try to earn a living.
Schoen: Well I tried to get you down at the office too, they told me to call you down there if I couldn't get you at home.
Boulin: Is that right?
Schoen: Yeah, she said you weren't there.
Boulin: Hm, well I'm out in the field a lot you know that.
Schoen: Oh okay.
Boulin: So, what's up.
Schoen: Not much, what you got, anything good?
Boulin: Uh, let's see, what have I got left? Hm, I got an Army 45 I would probably move, I got some commemoratives, but you don't want any commemoratives.
Schoen: Well, that depends.
Boulin: What do you mean?
Schoen: (Unintelligible) about the money.
Boulin: Oh, is that right?
Schoen: Uh huh.
Boulin: You did or you will?

Schoen: I am, next week, Monday a guy's gonna be here.

Boulin: I got a Missouri single action 45 long Colt.

Schoen: Uh huh.

Boulin: I've got, matter of fact I've got two of those. I got a Missouri 22.

Schoen: What do you want for them?

Boulin: Uh, let's see, 375 probably.

Schoen: Uh huh.

Boulin: Brand new, mint too.

Schoen: Yeah.

Boulin: One of them's serial number 102.

Schoen: Uh huh.

Boulin: Then I got serial number 103 in 22, in other words, the consecutive one to it.

Schoen: Uh huh.

Boulin: And let's see, then I've got a Nevada, a Sam Colt, they're all commemoratives. Then I've got a Pat Garret commemorative you've seen that one.

Schoen: Right yeah.

Boulin: Sold that. Uh I've got an Army 45 it's super mint.

Schoen: All those commemoratives have to go on paper?

Boulin: As of right now yeah, you know what I mean.

Schoen: No.

Boulin: Huh

Schoen: (Unintelligible)

Boulin: Well you know how it is, you know, on the telephone, Right?

Schoen: Oh, okay.

Boulin: So, I mean I got to do everything right.

Schoen: Right.

Boulin: And um,

Schoen: In other words, we do them like we did them before.

Boulin: Right.

Schoen: Okay.

Boulin: I got uh an Army 45 super mint.

Schoen: Uh huh.

Boulin: I still got that Ruger 40, I hadn't really parted with those Rugers you know what I mean, cause they're in my collection.

Schoen: Good, I'm glad cause that's why I'm trying to get you.

Boulin: Is that right?

Schoen: Yeah.

Boulin: You know, well you know the only reason I was going to sell those is if I got top dollar or I wouldn't sell them. (Unintelligible)

Schoen: Well, in order words you got a mess of stuff down there.

Boulin: Yeah, right.

Schoen: Well, how much money you think I need to bring with me?

Boulin: All depends on how much you want to buy. If you're really looking to buy you know, to get a lot I'd say two, three thousand.

Schoen: Okay, that's no problem.

Boulin: It's up to you.

Schoen: Aren't you afraid of keeping them guns at the house?

Boulin: Well I got two, can you hear my dogs.

Schoen: Yeah.

Boulin: I got two bigs shepherds. One of them was a police dog for eight years.

Schoen: Uh huh.

Boulin: And my wife's home all the time when I'm not, cause *(unintelligible)* she never goes to the store unless I'm home. So you know that's another safeguard.

Schoen: Well that's not too bad.

Boulin: And uh.

Schoen: What you have a vault or anything you keep them in.

Boulin: Yeah right.

Schoen: Well that's

Boulin: I got, they're pretty well secured.
Schoen: That's good.
Boulin: There's an alarm system in the house.
Schoen: Uh huh.
Boulin: Well they'd have a pretty tough time going by.
Schoen: Man.
Boulin: You got to remember this neighborhood here is 68 houses in the neighborhood, and 37 are owned by policemen.
Schoen: Jesus.
Boulin: So, it's like a police ghetto. You know what I mean. There's one street here if you go up and down the street, every, every street on both sides, every house on both sides got a police car in it.
Schoen: Uh huh.
Boulin: It's like a police community. Matter of fact you know the realtor was telling us the property value down here, up here
Schoen: Yeah.
Boulin: Are being affected cause there's too many policemen up here and a lot of people won't move up here.
Schoen: Why?
Boulin: Cause they don't like living with this many cops. They feel as though you know they'll be watched. Everything they do.
Schoen: Well, then if if if they're not doing anything wrong, they got nothing to worry about.
Boulin: Right, you know how people are, you know. They think the cops are going to be spending their off duty time trying to catch them j-walking.
Schoen: Great.
Boulin: You know how people are.
Schoen: Yeah, I'd rather live in that type area.
Boulin: Sure, they only had one burglary in here in five years and they caught the guy before he even got out of the house. Matter of fact they were, they were fighting over who was going to shoot him. So you know that, that kind of makes you feel a little better.

Schoen: You say I could come down Wednesday evening

Boulin: I don't see any reason why not.

Schoen: Okay.

Boulin: Tomorrow night then right?

Schoen: Huh, no, next Wednesday.

Boulin: Oh, next Wednesday.

Schoen: Yeah.

Boulin: Yeah, no problem.

Schoen: Okay, you want to give me directions?

Boulin: Well, wait a minute, Greenbelt's this weekend isn't it?

Schoen: Yeah.

Boulin: You doing Greenbelt?

Schoen: Well, I'll tell you, my grandmother is awful sick.

Boulin: Oh okay.

Schoen: And, as close as the family is, see that's my mother's mother.

Boulin: Uh huh.

Schoen: I don't know whether I'm going to be there or not. Now I paid him for the tables.

Boulin: Uh huh.

Schoen: And I told him if I'm not there Saturday, I might be there Sunday. But I don't, you know, what can happen cause she's ah got pneumonia really bad.

Boulin: Really, I'm sorry to hear that.

Schoen: And uh, well as close as I've been to her and, you know.

Boulin: Right.

Schoen: (*Unintelligible*) I'd hate to be away if something happened to her.

Boulin: Oh, I can understand that.

Schoen: So.

Boulin: Well, you can slide down whenever you feel like it I mean you know, if you change your mind another night, let me know.

Schoen: Well, can you give me directions?

Boulin: Oh, sure.
Schoen: Slowly.
Boulin: Slowly, huh?
Schoen: Let's see I'd be comin uh
Boulin: Just come right down 27.
Schoen: Okay.
Boulin: Okay.
Schoen: Wait a minute.
Boulin: Get into Damascus right?
Schoen: Yeah.
Boulin: You know where I'm talking about?
Schoen: Yeah.
Boulin: All right there's one traffic light, right?
Schoen: Yeah.
Boulin: You make a left.
Schoen: I make a left?
Boulin: You make a left.
Schoen: Okay.
Boulin: You know how it dead ends as you're coming down 27 dead ends.
Schoen: Yeah right.
Boulin: Go either left or right, you go left.
Schoen: Okay.
Boulin: All right, you go approximately a quarter of a mile and there's the first road on your right, Woodfield Road.
Schoen: Wait a minute.
Boulin: In other words, you make a left and then your immediate right.
Schoen: Yeah.
Boulin: Okay.
Schoen: Uh huh.
Boulin: Come down that road approximately two miles and on your left you'll see Hawkins Creamery Road, H A W K I N S, separate word Creamery, C R E A M - E R Y.
Schoen: Uh huh.
Boulin: Okay, now you go to 8700, 8 7 0 0,

Schoen: Yeah.

Boulin: Is where I live.

Schoen: Okay.

Boulin: Okay, it's right, it's right as you come into the new development, in other words once you get on Hawkins Creamery you'll come in about two miles and you'll see a new development, you'll be coming down hill and then up hill, I'm at the top of the hill.

Schoen: Okay, wait a second, I want to read this all back to you to make sure I got it right.

Boulin: Okay.

Schoen: Okay, take route 27 till it deadends at Damascus.

Boulin: Right.

Schoen: Turn left, go approximately a quarter of a mile

Boulin: Right.

Schoen: And turn right.

Boulin: Okay that's Woodfield Road or Route 124.

Schoen: Right, okay, go two miles to Hawkins Creamery Road.

Boulin: Right, now you got to be careful cause there's a fork there, in other words it's it's a hard intersection to see, so just drive slow.

Schoen: Which way do I go on Hawkins Creamery?

Boulin: Going left.

Schoen: Okay, left, that's 8700, it's

Boulin: Right.

Schoen: A new development on the top of the hill.

Boulin: Right, I'm on the house on the right, right on the corner.

Schoen: Okay, I'll definitely be there Wednesday.

Boulin: Okay.

Schoen: Okay because uh there, there isn't any conflicting things Wednesday.

Boulin: Well everything I'm selling is mine so I mean I don't really feel too bad about it, you know what I'm sayin'.

Schoen: Uh huh.

Boulin: It's all my stuff so they really can't say a whole hell of a lot.

Schoen: The uh, let's see,

Boulin: Are you going to re-sell this stuff or what?

Schoen: Oh sure, some of it. Now those commemoratives, I don't know.

Boulin: Uh huh.

Schoen: Uh, I think the best time for me would be about betwen 7:30 and 8.

Boulin: That's fine for me cause I'll be home by then.

Schoen: Okay, good enough.

Boulin: Okay, so you want to make it next Wednesday.

Schoen: Yeah.

Boulin: Okay.

Schoen: Definitely, definitely now, I will be there. Don't forget.

Boulin: I won't forget you.

Schoen: Okay, (unintelligible)

Boulin: Well I need the money.

Schoen: Okay, cause I told you the other night but you said you weren't going to be home until nine. Did she tell you I called?

Boulin: um, no, she sure didn't.

Schoen: Yeah.

Boulin: I'll chew her out as soon as you get off the phone.

Schoen: No, don't worry about that.

Boulin: She didn't tell me because

Schoen: (Unintelligible) I told her to tell you just tell him Gordon called.

Boulin: I didn't get home till 10:30 and then you said you'd call back so she didn't tell me.

Schoen: Well, I called, a, let's see I think it was quarter after nine and I didn't get an answer.

Boulin: Hm, okay, well

Schoen: So, that's that.

Boulin: Well, I try to do a lot of stuff you know, I probably trying to do too much.

Schoen: Uh huh.

Boulin: Okay.

Schoen: Okay, Rick, if I don't see you this weekend, I'll definitely see you Wednesday.

Boulin: If the dogs bark at you when you pull in the driveway

Schoen: Uh huh.

Boulin: Don't worry about them as long as we're home they ain't going to bite you.

Schoen: Okay.

Boulin: Even the big one, he won't bother you as long as we're home. If we weren't home, it's a different story.

Schoen: All right.

Boulin: Cause as soon as we put him on his on his chain he knows he's a guard dog then you know, that's the way he was trained.

Schoen: Uh huh.

Boulin: And he'll go bananas.

Schoen: Okay.

Boulin: Okay.

Schoen: Good enough.

Boulin: Bye.

Schoen: Talk to ya.